

IN SENATE OF THE UNITED STATES,

MAY 24, 1828.

MR. CHAMBERS SUBMITTED THE FOLLOWING REPORT:

The Select Committee, to whom were referred the several petitions and memorials of those persons who have lost property by French spoliations prior to the year 1800, praying for indemnity from the United States, made the following

REPORT:

The petitioners claim redress from the government for losses sustained by the capture and condemnation of their vessels and cargoes by the French government prior to the convention of 1800, and for which they allege the United States, by that convention, received consideration.

The petitioners form a portion of a class of individuals, whose claims are entitled to the most deliberate consideration, as well because of the large amount involved, as of the magnitude and importance of the principles upon which their pretensions are founded. The Committee are not in possession of information which enables them to ascertain the extent of the claims with accuracy, but find that it has been variously estimated on different occasions, by those who had acquired some knowledge of the subject, to be from eight to fifteen millions of dollars.

The amount involved, large as it may be, is not, however, more calculated to invite the serious consideration of the government than the very intimate connexion this subject has with the most important, and, perhaps, the most delicate, events in the history of the nation. It is an incident to the investigation of these claims, not perhaps of fortunate influence to their final adjustment, that they date their existence from, if they do not owe their being to, that period in which the rights of the nation, however well understood, or the just demands of our citizens, however well urged, could not be enforced against the other nations of the world by the same efficient means which, happily, we now possess. Emerging from a long and expensive war, and from a state of colonial dependence; without the means of discharging even the obligations which secured the faithful services of her soldiers; without a naval force, and without a prospect of resources to provide the materials for another conflict; the United States, at the close of the war of independence, and for some years after, could find less induce-

ment to be withdrawn from a peaceful attitude than at any other period during her existence as a nation.

But, whatever recollections may be connected with these claims, they are now presented to the justice of the Government; and neither their amount, on the one hand, nor the delicacy of reverting to scenes of national infancy and weakness, on the other, can excuse us from the duty of a full and candid examination of their character, and an equitable decision upon their merits.

In the performance of this duty, the Committee will introduce no other facts than such as are believed necessary to make intelligible the views they have presented. The voluminous documents transmitted to the Senate with the message of the President of the United States, of the 20th May, 1826, containing a history of the transactions connected with the subject, cannot be embodied in a report. To the information contained in these documents, as also to the facts set forth in a report of a Committee of the Senate, of 8th February, 1827, the Committee refer in general terms, confining themselves to the introduction of such facts as are believed necessary to an understanding of the opinions which the Committee have adopted.

The operation of the treaties of 1778, between the United States and France, being at the foundation of most of the questions involved in this subject, the Committee will briefly advert to the facts connected with those treaties.

The co-operation of some of the established governments of Europe, in the early stages of the war of independence, was an object of the most anxious solicitude to the sages who directed the councils of this then infant nation, and pursued by them with a perseverance exceeded only by the dangers which must have ensued from disappointment. The injury threatened to our enemy by the loss of these States, was too great, to allow nations, habitually her rivals, to continue unconcerned spectators of the contest of which the colonies were the prize. The hopes of our people were directed more particularly to France, whose real interests, united with long-cherished prejudices, all led her to aid us in a struggle for national existence. France at that time was in a state of profound peace with England, and the mutual obligations of existing treaties imposed serious restraints on her disposition to assist us; and to induce her to gratify our appeal, in its whole extent, required the tender of some motive more powerful than those treaty obligations.

She had favorably received our first overtures to her aid; had opened her ports to our commerce; had offered every facility to uninterrupted intercourse with her people and the other friendly nations; and had openly proceeded to encourage our efforts by every means consistent with her treaties with the enemy, and had furnished through her secret agents succors of money and stores in the most dark and doubtful period of the war. But it was of the last importance to the interests of this nation, that a more decisive and effective step should be taken by the French Government.

The common principles of policy which guide all nations, taught

France to await the development of the moral, political, and physical resources of a people who had so lately claimed the right and the power of self-government.

No sooner had the patriotic fervor of our citizens effected some of those great achievements which crowd the history of our revolutionary conflict, than the restraints which policy had imposed upon the government of France, yielded to the large and liberal offers presented by the American nation.

Our envoys were authorized to concede the most important and valuable commercial advantages, to commit the American Government to furnish means in provisions to the amount of \$2,000,000, and in naval force to the amount of 6 frigates, manned and fitted for service, and any other assistance in their power to prosecute a war against the British West India possessions for the benefit of France, to whom, in the event of conquest, they were to belong.

The 11th and 12th articles of the treaty of alliance of 6th February, 1778, are in the following words:

"Article 11. The two parties guarantee, mutually, from the present time, and for ever, against all other powers, to wit: the United States to His most Christian Majesty, the present possessions of the Crown of France in America, as well as those which it may acquire by the future treaty of peace: And His most Christian Majesty guarantees, on his part, to the United States, their liberty, sovereignty, and independence, absolute and unlimited, as well in matters of government as commerce, and also their possessions, and the additions or conquests their confederation may obtain during the war, from any of the dominions now, or heretofore possessed by Great Britain in North America, conformable to the fifth and sixth articles above written, the whole, as their possessions, shall be fixed and assured to said States at the moment of the cessation of their present war with England.

"Article 12. In order to fix more precisely the sense and application of the preceding article, the contracting parties declare, that in case of a rupture between France and England, the reciprocal guarantee declared in the said article, shall have its full force and effect the moment such war shall break out; and, if such rupture shall not take place, the mutual obligations of said guarantee shall not commence until the moment of the cessation of the present war between the United States and England shall have ascertained their possessions."

The treaty of amity and commerce of the same date, contains, amongst others, the following provisions:

"Article 17. It shall be lawful for the ships of war of either party, and privateers, freely to carry whithersoever they please, the ships and goods taken from their enemies, without being obliged to pay any duty to the officers of the admiralty or any other judges; nor shall such prizes be arrested or seized when they come to or enter the ports of either party; nor shall the searchers, or other officers of those places, search the same, or make examination of the lawfulness of such prizes; but they may hoist sail at any time, and depart, and carry their prizes to the places expressed in their commissions, which the commanders

of such ships of war shall be obliged to show. On the contrary, no shelter or refuge shall be given in their ports to such as shall have made prize of the subjects, people, or property of either of the parties; but if such shall come in, being forced by stress of weather, or the danger of the sea, all proper means shall be vigorously used that they go out and retire from thence as soon as possible.

"Article 22. It shall not be lawful for any foreign privateers, not belonging to subjects of the Most Christian King, nor citizens of the said United States, who have commissions from any other Prince or State in enmity with either nation, to fit their ships in the ports of either the one or the other of the aforesaid parties, to sell what they have taken, or in any other manner whatsoever to exchange their ships, merchandises, or any other lading; neither shall they be allowed even to purchase victuals, except such as shall be necessary for their going to the next port of that Prince or State from which they have commissions."

The Committee do not deem it necessary here to introduce the other provisions of these treaties. Their influence, and the faithful observance of her plighted engagements, on the part of France, are facts as familiar to all as is the fact that "the essential and direct end of the alliance, to maintain effectually the liberty, sovereignty, and independence, absolute and unlimited, of the United States," was gloriously and triumphantly accomplished.

After the peace of 1783, the rapid advance of the American nation to wealth and power, soon placed it in a situation no longer to feel the want of guarantees for its independence, from any other arm than that of its citizen soldiers. In the multiplied pursuits and interests of its citizens, the inconveniences arising from the partiality which characterized the treaties with France, became obvious. It was not, however, until the occurrence of a war, in which France was a party, and the United States neutral, that these treaties began to produce effects which promised to France the greatest advantage, and were the most offensive to the United States.

The Committee do not assume the duty of deciding whether the war which succeeded the French revolution, was offensive or defensive on the part of France. It is known that this question agitated the councils and divided the opinions of the great statesmen of this country at that period. It is not now to be doubted, however, that from the early stages of the French revolution, the most flagrant acts of hostility were systematically, though sometimes secretly, perpetrated against the people of that nation, by the neighboring powers, in which England was most enthusiastically engaged, impelled by the recollection of ancient animosities, as also by alarm at the dangers which threatened the settled governments of Europe from the political doctrines which that revolution proposed to sanction.

England was at first secretly, and afterwards openly, a party to the league of 1791, which contemplated an invasion of France, and a partition of a portion of her territory. Arms and supplies were furnished by her to the emigrants who were in open hostility to France: a ministerial order directed the detention of French and neutral vessels in

British ports, bound to France: the British Parliament prohibited the exportation of provisions to France, and authorized aliens to be sent out of the country. French vessels, endeavoring to escape from ports taken possession of by their enemies, were seized and sent into England, and detained; and, lastly, the French Minister received a peremptory order to quit the British kingdom.

During these transactions, it was not alleged that England had been provoked by a war against her, in name or in fact. France, excited by a furious revolutionary spirit, goaded by oppression and insult from abroad, and by all the worst passions which are elicited in civil convulsions, declared and entered upon the war with a temper unrestrained by the laws which the common consent of nations has enacted to lessen its mischiefs and protect those who are not parties to it.

This exasperated feeling on the part of France, was cultivated and increased by the occurrences which succeeded her declaration of war on the 1st February, '93. The maritime superiority of her enemies enabled them to inflict upon her the most distressing injuries, and sometimes of a character to countenance the application to them of the language used in one of the French decrees, in which they were declared to be "means disapproved by the laws of humanity and by those of war." The course of policy which prevailed in the United States, did not dissipate the irritation which existed in France.

By the 17th article of the treaty of commerce, it will have been seen that French armed ships and privateers, with their prizes, were to receive shelter and protection in our ports; and that our officers were not to seize or search them, or make examination concerning the lawfulness of their capture; while no shelter or refuge was to be given to her enemy's ships, but they were to be made to leave our ports as soon as possible, when forced in by stress of weather or dangers of the sea.

The Consular Convention of 14th November, 1788, had given to French Consuls jurisdiction in specified civil cases, as also authority to arrest marine deserters.

In virtue of these stipulations French prizes found safe refuge in our ports; they were brought in, condemned, and sold here; commissions were issued, or at least delivered, by French consuls to privateers and letters of marque, which were here fitted out and armed. These important interests were effected with the greater facility from the strong sympathy of a large portion of the American people, arising from a recollection of the efficient aid derived from France in the prosecution of our revolutionary struggle, and from the actual sufferings and injuries then experienced by the people of that country. A civil war raging in her bosom, the horrors of a famine in prospect, an actual and almost total failure of her crops, and a powerful league of the nations of Europe against her, openly avowing their determination to starve her into submission, did not fail to revive and bring into the liveliest operation, every remains of generous feeling which their associations and a community of dangers and services had awakened in America.

The advantages to France from the treaty provisions alluded to in the state of things which has been described, did not escape the obser-

vation of England, and complaint and remonstrance unceasingly announced to our government the dissatisfaction with which she witnessed the progress of their operation. Another subject, of very serious consideration, could not fail to present itself to the notice of our government. The exposed condition of the French colonial possessions to which the treaty guarantee had reference, and the possible or probable demand for the fulfilment of that guarantee might embarrass the nation to an extent which it was difficult to anticipate. Whether by the fair import of the treaty and the true character of the war, the obligation was imposed on the American nation, in conformity to established principles of international law, to furnish the aids contemplated in the treaty, or whether the *casus fœderis* did not exist, the Committee do not feel themselves called upon to decide. Whatever might be the decision of an impartial government or statesman, it will at once occur that France, in the excited condition of her councils, could find motives as well as arguments to convince herself; and that the only alternative would be to concur with France, and be at war with her enemies, or to differ with France, and be at war with her.

It was the opinion of those who directed the policy of this country, that a proclamation of perfect neutrality, to be enforced as far as possible, would lessen the difficulties which were presented. The attempt to enforce a neutral policy did not satisfy the expectations of France. She had before enjoyed, in fact, as she had claimed of right, the benefits of the treaty stipulations which did not belong to her enemy, and the profession of neutrality was soon followed by measures which deprived her citizens of advantages too important to be abandoned without complaint.

The negotiation with England, and the conclusion of the treaty of 19th November, 1794, were additional causes of displeasure to France. She contended that the United States had thereby surrendered to England the right to capture our ships prosecuting a voyage to or from France, or her possessions, and sanctioned not only by the provisions of our treaties of '78, but by the acknowledged laws of nations; that the articles of contraband were enlarged and extended beyond the list acknowledged by the existing practice of nations; and that facilities were granted in our ports and waters to British armed ships and their prizes, in direct violation of our ancient treaties with her, and calculated to operate injuriously to her upon the war then existing. The actual change required by the United States in the practice before pursued by French citizens in relation to rights claimed and exercised by them as secured by the treaties of '78, and referring to the provisions of the treaty of '94, with England, for the foundation on which it was made, most certainly resulted in the great injury and loss to the owners of their private armed ships, and lessened materially the extent of their hostile maritime operations against their enemy. One instance, found in a report of the Secretary of State to the President, will illustrate the position that such change was made. That report says: "The 24th article of the British treaty having explicitly forbidden the arming of privateers, and the selling of their prizes, in the ports of the

United States, the Secretary of the Treasury prepared, as a matter of course, circular letters to the Collectors, to conform to the restrictions contained in that article as the law of the land. This was the more necessary, as, formerly, the Collectors had been instructed to admit to an entry and sale the prizes brought into our ports."

The Committee repeat, it is not their purpose, and is not conceived to be their duty, to approve or censure the policy pursued by the United States. It is a part of the history of that period, that great division of opinion on these subjects prevailed amongst the best and wisest men in the nation. To the merits of the claims now presented, it is not important on which side of that agitated question truth was to be found, as the Committee will hereafter have occasion to show.

France, whether justified or not by the conduct of the United States, did, in fact, assume, as the foundation of her proceedings, that we had violated our treaty stipulations, and in effect, if not in form, had made ourselves auxiliaries to the war carried on against her. Decrees and orders of the most violent and destructive character, in acknowledged opposition to her treaties, and, in truth, in opposition to the laws and usages of civilized warfare, were, from time to time, enacted against our commerce, and enforced under circumstances which put at defiance all hope of escape from their ruinous provisions. Repeated remonstrances produced either no effect whatever, or a temporary suspension, which only served to invite our merchants to the ocean, when new decrees, passed without notice, and of immediate operation, swept away the property of its unsuspecting owners. Attempts at negotiation with the French government having proved abortive, the United States, by various legislative acts, made provision for the protection of our commerce, and to repel the aggressions and injuries of which our citizens complained. Naval armaments were directed; appropriations were made to put the ports and harbors in a state of defence, and to raise a military force. The strongest measures adopted by the American government are to be found in the acts of Congress declaring that the United States were of right freed from the stipulations of her treaties with France, and that the same should not be thenceforth regarded as obligatory on the government or citizens of the United States; and authorizing the commanders of United States vessels, or private ships, armed and commissioned, to capture *armed* French ships on the high seas.

Under these acts of Congress, and the Executive instructions made in pursuance to their provisions, it is known that eighty-four French vessels were captured, of which one was sunk; eleven were restored because not armed, sixty-eight (valued at not less than \$600,000) were condemned, one half to the captors and the other to the United States, and four public ships were either delivered up to the French or paid for under the convention of 1800. During the period of these hostile operations, the French government uniformly declared its unwillingness to change the relations of peace which had existed, nor did they, at any time, admit those relations to have been changed. There was no period during which they did not receive and accredit a representative from the United States. After the recall of Mr. Monroe, when

the excitement produced in France by circumstances connected with the British treaty was at its extreme, the French government refused to receive Mr. Pinckney, who was sent out as his successor, and, for a time, withdrew their Envoy from this country. At the same time, however, Mr. Skipwith was resident in Paris, the acknowledged Consul General of the United States, and it is believed that, during nearly the whole period of our difficulties, an officer of the same grade also represented the French government near the United States. The relations which existed between the two nations in the interval between the passage of the several acts of Congress before referred to, and the convention of 1800, were very peculiar, but, in the opinion of the Committee, cannot be considered as placing the two nations in the attitude of a war, which would destroy the obligations of previously existing treaties. This opinion, however, is by no means a material link in the chain of facts and arguments by which the conclusion adopted by the Committee is sustained. A very large proportion of the spoliations committed by France were prior to the acts of Congress of '98; the several decrees of 2d July, '96, 27th Nov. '96, 1st Feb. '97, 2d March, '97, 13th Nov. '97, and 18th Jan. '98, had destroyed our commerce, and left little or nothing to be thereafter lost.

The injuries growing out of these decrees were inflicted during a period when the operation of the treaties was not matter of question. But again it may be remarked, that the violations of our neutral and maritime rights, not only gave to the citizens of the United States just claim to redress by virtue of treaty stipulations, but they were such as to justify the United States to demand of the French government ample remuneration, upon the acknowledged principles of international law, the plainest provisions of which were outraged by the decrees of France and the conduct of her authorized agents and citizens. Putting aside, therefore, the consideration of conventional engagements between the two nations, the right of our citizens to indemnity was absolute, and the government which was instituted for their protection, and emphatically for their protection against the wrongs committed by foreign governments, was the legitimate organ through which the indemnity was to be sought. This duty was too obvious and imperative to be neglected. A disposition on the part of France to terminate their differences with us was promptly met by a renewed mission, clothed with ample power. The discussions which occupied the ministers on this occasion were full of interest to both nations, and to none as interesting as to those numerous sufferers whose claims are now under consideration. The protection of the claimants who now present themselves to the Senate, was the very first object of the American government. The instructions to her Envoys commence with a reference to this leading topic:

"*Gentlemen:* You have been witnesses of the enduring patience of the United States, under the unexampled aggressions and hostilities authorized and sanctioned by the French Republic against the commerce and citizens of the United States. And you are well informed of the measures adopted by our government to put a stop to these

evils, to obtain redress for the injured, and real peace and security to our country. And you know that, instead of relief, instead of justice, instead of indemnity for past wrongs, our very moderate demands have been immediately followed by new aggressions and more extended depredations."

The first in order as in importance amongst the objects of their attention, is then noticed by their instructions, thus:

"*First.* At the opening of the negotiation, you will inform the French Ministers that the United States expect from France, as an indispensable condition of the treaty, a stipulation to make to the citizens of the United States full compensation for all losses and damages which they shall have sustained by reason of irregular or illegal captures or condemnations of their vessels and other property, under color of authority or commissions from the French Republic or its agents."

The American Envoys found no difficulty in obtaining from the French Ministers an acquiescence in the principle of compensating the claims of our citizens, but they too had claims, alleged to be founded on contract, treaty, and the laws of nations; and their earliest proposition suggested, "that the first object of the negotiation ought to be the determination of the regulations, and the steps to be followed for the estimation and indemnification of injuries for which either nation may make claim for itself, or for any of its citizens. And that the second object is to assure the execution of treaties of friendship and commerce made between the two nations, and the accomplishment of the views of reciprocal advantages which suggested them."

In the progress of the discussions the anxiety of the American government to avoid the onerous stipulations of the ancient treaties, and the unwillingness of France to yield the already important and daily increasing advantages secured to her by their provisions, opposed the most alarming difficulties to an adjustment. Large pecuniary advances, proposed by the American Envoys, were insufficient to induce France to relinquish the benefits which she claimed by an adherence to the treaties of '78 and '88. It was then the American government found in the claims of her citizens the means of effecting a result to which her pecuniary offers were inadequate, and to relieve herself from obligations of which it may be said it was as impossible to estimate their extent, as it was dangerous to the peace and interest of the nation to allow their continuance.

It was declared by the French Ministers to be "their intention to reserve to France the right of choice between the restoration of her privileges (by the treaties) and the payments of indemnities which may be brought against her, so that they have never supposed that she would enjoy privileges without payment of indemnities, or could pay indemnities without the enjoyment of privileges"—"since France regards those privileges as an advantage peculiar to her, and for the abandonment of which *she may stipulate as she deems proper.*"

The American Envoys, conforming to the views of their government, whose just right to make the claims of its citizens conducive to the accomplishment of great objects of national interest is conceded,

properly availed themselves of the only motive sufficiently operative to withdraw France from the determined perseverance with which she adhered to the treaties.

They proposed as the basis of the convention—

“1st. The former treaties shall be renewed and confirmed.

“2d. The obligations of the guarantee shall be specified and limited, as in the first paragraph of their 3d proposition of the 20th of August, [which is] 3d. The mutual guarantee in the treaty of alliance shall be so specified and limited, that its future obligation shall be, on the part of France, when the United States shall be attacked, to furnish and deliver at her own ports military stores to the amount of one million of francs; and, on the part of the United States, when the French possessions in America, in any future war, shall be attacked, to furnish and deliver, at their own ports, a like amount in provisions.

“3d. There shall be mutual indemnities, and a mutual restoration of captured property not yet definitively condemned, according to their 5th and 6th propositions of that date.

“4th. If, at the exchange of ratifications, the United States shall propose a mutual relinquishment of indemnities, the French Republic will agree to the same; and, in such case, the former treaties shall not be deemed obligatory, except that under the 17th and 22d articles of that of commerce, the parties shall continue for ever to have, for their public ships of war, privateers, and prizes, such privileges in the ports of each other, as the most favored nation shall enjoy.”

The answer to these propositions will fully evince the influence of the claims of American citizens in effecting what the offer of a very large amount of money had not been sufficient to accomplish. The French Ministers say:

“They accede to the proposition of the first article.

“The second cannot be admitted, unless the 4th article give to the French Republic the assurance that, if she propose to the United States the reciprocal relinquishment of indemnities, this proposition will be accepted, notwithstanding the relinquishment of the right of guarantee, setting aside the treaty of alliance, and the privileges resulting from the 17th and the 22d articles of the treaty of commerce. If the 4th article do not contain this stipulation, neither can this 4th article nor the 2d article be admitted.

“The 3d seems to require some explanation.

“The French Ministers are of opinion—

“1st. That the regulation of indemnities for prizes captured, and which shall have been condemned at the time of the signing of the treaty, shall apply to individuals.

“2d. That the vessels or national ships taken shall be respectively restored or paid for.

“3d. That prizes captured from individuals, and not tried at the time of the signature of the treaty, shall be tried according to the provisions of the treaty of 1778, by the most exact interpretation thereof that can be properly given.

“The 4th article is inadmissible, as has been before observed, unless

it offer to France the same right as the United States, and unless it maintain the ancient treaties, with the exception of the obligation of guarantee and of privileges.

"To fulfil this object, and to confirm the 2d article, the 4th article must be expressed in these terms, or others of equal force: 'If, at the exchange of ratifications, the United States offer to the French Republic, or if the French Republic offer to the United States, the reciprocal relinquishment of indemnities, the proposition shall be accepted, and in this case the obligation of guarantee arising out of the 11th article of the treaty of alliance, and the privileges resulting from the 17th and 22d articles of the treaty of commerce, shall be reduced to the privileges which the most favored nation may enjoy.'"

The Envoys approach the subject of a relinquishment of American claims with a caution suggested by their value and amount, as well as by the peculiar solicitude for their adjustment, indicated in their instructions; and, as if unwilling to assume the responsibility of a positive abandonment of them, even on the terms of a surrender by France of reciprocal claims of her citizens and the obnoxious treaty obligations, they propose an arrangement which shall reserve that most important question for the deliberate decision of those who, by the Constitution, are intrusted, in the last resort, with the authority to regulate the terms of our national relations.

The convention ultimately formed, in connexion with the facts occurring in the progress of its ratification, will be found to have produced the precise state of things contemplated by the 4th proposition of the Envoys. The 2d article of the Convention, concluded 30th September, 1800, for the avowed purpose of recognising, reserving, and postponing the mutual claims for indemnities and ancient treaty obligations, declared as follows:

"Article 2d. The Ministers Plenipotentiary of the two parties, not being able to agree at present respecting the treaty of alliance of 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of 14th November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon those points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows."

The convention, with this article included, was ratified by the French Government, and by that act the claim to indemnities was certainly admitted, and a pledge given to negotiate at a future period, and provide for their payment.

The Senate of the United States, when the convention was submitted to them, ratified it, after first expunging the second article, and inserting an article limiting its duration to eight years.

When this ratification was presented to the French Government, the modifications made by the American Senate were reluctantly assented to, with the express declaration and provision that, by the retrenchment of the second article, the two States renounce the respective pretensions which are the object of the said article.

Mr. Jefferson had become the President of the United States in the

interval between the ratification by the American Senate and the last ratification by France; and the ratification by the First Consul of France not being pure and simple, in the ordinary form, he thought it his duty, to avoid misconception, to ask a second advice and consent of the Senate.

That Mr. Jefferson believed the French ratification, in the mode returned, entirely consistent with the altered state of the convention, will appear from a communication of Mr. Madison, Secretary of State, to Mr. Livingston, then Envoy to France, under date of 18th December, 1801, in which he says, "I am authorized to say that the President does not regard the declaratory clause as more than a legitimate inference from the rejection by the Senate of the second article."

The Senate resolved that they considered the said convention as *fully* ratified, and the President thereupon promulgated it in usual form.

The American claimants were from that period deprived, by the act of their Government, from all right to indemnity from France. They do not complain of the measure of their Government in applying their claims to the discharge and satisfaction of reciprocal claims due to the citizens of France, or to purchase an exemption from onerous and offensive obligations due by the ancient treaties from the American to the French Government. They admit the authority, and applaud the prudence, which was exercised so advantageously for the general interest of the whole nation, by the expenditure of means or property of a portion of its citizens. But they allege that the national faith, and the principles of national law, entitle them to expect remuneration for property thus disposed of, and for the recovery or indemnity whereof they would have had an acknowledged right against France, but for the satisfaction made therefor by France to the American Government, and the relinquishment consequent upon that satisfaction.

It is believed no principle can be more plain than that a Government taking possession of private property, and appropriating it to public service, is bound to compensate the owner. The Constitution of the United States has not, however, allowed this obligation to rest upon the authority of international law, but has sanctioned, by an express provision, the most sacred regard to the inviolability of private property. Its language is, "Nor shall private property be taken to public use, without just compensation."

The Committee have before intimated an opinion that the merits of these claimants are not dependant upon the considerations of policy or propriety which may have been observed or violated by the United States in their intercourse with France during the period of the aggressions complained of. The Committee have assumed, on the authority of the concurring concessions of both the Governments, that the edicts of France, and the manner of their execution, were in direct hostility to the plain and admitted provisions, both of the treaties and the laws of nations. If, then, these unauthorized captures of the property of our citizens were made without the palliation which might be furnished by the existence of just cause of complaint against the American Government, the conduct of France is, by so much the more,

palpably culpable, and the unprovoked character of the aggression should remove all objection to the claim for indemnity. If, on the other hand, the United States, by a course of policy arising out of a cherished hostility to France, or a partiality to her enemy, or from any other cause, had given to the French Government just occasion of complaint or for reprisals, it would seem to result that the American Government should not now oppose a declaration of its own unwise policy to the claims of its unoffending citizens, whose property has been the victim of its own errors, and especially when, after the acknowledged impolicy of the Government, by which the loss had been made to fall upon its innocent citizens, that Government had derived, from the property lost, the means of discharging itself not only of the consequences of these errors but also of other most important obligations.

The great difficulty with which the Committee feel themselves pressed, is to present to the Senate a fair and satisfactory estimate of the amount of loss sustained by our citizens, and the amount of gain to the Government.

In obeying the constitutional injunction to make *just compensation*, the committee do not believe the Government ought to grant, or the claimants to expect, a sum equal to the actual value of the property lost. The standard by which to arrive at a more accurate estimate of the just compensation, would seem to be formed from the probable benefit arising to the claimants, if their rights had remained to them unappropriated by the Government, and by the probable amount which the Government would have been required to expend, to effect the objects gained by the application of the claims. The difficulty of coming to a precise result in the investigation of either of these topics, will be at once evident. The actual condition of the government of France, when the injuries were committed, and the changes it has since undergone, will not escape consideration. It is very certain, that in the revolutionary state of the country, and the frequent change of its rulers, the prospect of recovery was postponed to a distant period. The expectation of delay was itself a matter calculated to lessen the value of the claims.

That the claims were of value, cannot with reason be denied. They were admitted by France, and whatever changes her government might experience in its form, or in the title or powers or persons of its rulers, the obligations to discharge them remained, and pursued the Government through all such changes. They were considered valuable by both the governments at the time they were released. France, ultimately, though reluctantly, consented to receive them in discharge of claims due to her citizens, which she regarded as very important, and of the privileges of her ancient treaties, which she regarded as still more important than the claims of her citizens. The United States purchased with them the reduction of the rights of France in relation to privateers and prizes to those of the most favored nation, and an exemption from the guarantee—for the first of which she had offered three millions of francs, and for the last five.

It could not but occur, however, that France, whenever she should

be willing to decide upon and discharge these claims, would assume to herself the privilege of estimating their amount, as also the circumstances connected with their origin and progress, and the consequent uncertainty of the principles of their adjustment, and of the degree of reduction to which they were subject, would necessarily have lessened their value. Various other considerations, which the committee will not pursue, could be suggested, to enlarge upon this particular view of the subject. The Committee are not prepared to adopt the rule which obtains in the pecuniary transactions of individuals, by which the voluntary agent or trustee who compromises the claim of another, and receives less than the full amount, is made responsible for the whole.

The principle which lies at the foundation of this rule, fails in its application to governments. There can be no apprehension of impure motive, or of fraud, or connivance in the conduct of a government, over the claim of its citizens against foreign governments. Its action commences at the period when individual effort has proved fruitless, and must be regulated by reference not to the interests or the rights of the injured citizens alone, but of the whole community. A majority of the Committee, after much deliberation on this most difficult branch of the subject, have concurred in adopting as the basis by which to arrive at a given sum, the proposition suggested in the instructions to our Envoys, dated 15th July, 1797, and which authorized them to stipulate for specific succors, to an amount not exceeding two hundred thousand dollars per annum, in place of a general guarantee. A difficulty, it is certain, yet remains, to ascertain the gross sum which will be an exact equivalent for an annual subsidy of that amount, and the Committee believe that any sum in gross should be adopted as a tender on the part of the government, and voluntary acceptance on the part of the claimants. They recommend, that, in the offer which shall be made to the claimants, the condition shall be annexed, providing for full notice to the claimants, and requiring from all who shall accept the terms, and become distributees of the fund, a full discharge to the United States.

The character and condition of the claims, after the lapse of so many years, will necessarily require the agency of a commission to arrange and establish their validity and amount, and apportion the distribution for which, at a future period, provision in detail will be necessary. In the mean time, and with a view to bring before the Senate the general merits of the claims, the Committee beg leave to report the following resolutions:

Resolved, That, at the conclusion of the convention between the United States and France, in 1800, there were large and just claims due from the French Government to citizens of the United States, for spoliations on their commerce.

Resolved, That, by the terms of said convention, the United States relinquished the said claims, and released the French government from the payment thereof.

Resolved, That it is proper and expedient for the United States to make just compensation to those to whom said claims are due.



